IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

S.A.NOS.108 AND 109 OF 2007
AND
M.P.NOS.1 AND 1 OF 2007

S.Manoharan .. Appellant in both the appeals (Plaintiff)

Vs.

1.P.A.Rajamanickam .. Respondent No.1 in S.A.No.108/2007 & Respondent No.2 in S.A.No.109/2007

2.Gopal .. Respondent No.2 in S.A.No.108/2007 & Respondent No.1 in S.A.No.109/2007

These second appeals have been preferred under Section 100 C.P.C. against the judgment and decree, dated 30.08.2006 in A.S.Nos.9 and 154 of 2005 on the file of the learned Additional Subordinate Judge, Salem, confirming the judgment and decree dated 22.11.2004 in O.S.Nos.255 of 2001 and 318 of 2002 on the file of the Principal District Munsif Court, Salem.

For Appellant : Mr.D.Shivakumaran

COMMON JUDGMENT

This judgment shall govern these two appeals, namely S.A.Nos.108 and 109 of 2007.

2.The common judgment of the learned Additional Subordinate Judge, Salem made in A.S.Nos.9 and 154 of 2005 is the subject matter of challenge before this Court.

3.The appellant filed O.S.No.255 of 2001, a suit for specific performance, on the strength of an agreement for sale of an immovable property. The same was dismissed. He took it on appeal in A.S.No.9 of 2005 and the same was also dismissed. Aggrieved over the same, he preferred S.A.No.108 of 2007. O.S.No.318 of 2002 was filed by the plaintiff, who is the second respondent in S.A.No.108 of 2007, seeking for permanent injunction against the appellant herein from interfering with the peaceful possession and enjoyment of the suit property and the suit was decreed. The appellant, who was the defendant therein, took it on appeal in A.S.No.154 of 2005 and the same was dismissed. Hence, S.A.No.109 of 2007 has been brought forth.

4.The appellant, as plaintiff, has filed a suit in O.S.No.255 of 2001

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seeking for the relief of specific performance, alleging that the first defendant has entered into an agreement for sale, dated 4.1.1999 in respect of an immovable property found therein, agreeing to convey the same for a consideration of Rs.25,000/-; that a sum of Rs.20,000/- was paid on the same date of the agreement, as advance; that the plaintiff was ready and willing to pay the balance of Rs.5000/-; that the plaintiff was actually put in possession of the property; that he was in continuous possession and enjoyment of the same; that despite many a demand made, the first defendant, owner, was evading to execute the sale deed; that apart from that, pending suit, the first defendant entered into an agreement for sale with the second defendant and hence, the second defendant was also added as party and hence, the suit has been filed.

5.The suit was resisted by the first defendant stating that the alleged agreement, dated 4.1.1999 was a forged one; that no such agreement was entered into and that possession was never handed over. The second defendant took a stand that there was an agreement for sale between the first defendant and himself on 12.9.2001; that following the same, the property has also been conveyed by way of sale deed on 30.01.2002 and that, he has become the absolute owner of the property and hence, the suit was to be dismissed.

6.The suit in O.S.No.318 of 2002 was filed by the plaintiff therein, inter-alia, stating that pursuant to an agreement entered into between him and the second defendant on 12.9.2001, he took possession of the property and also purchased the same by way of sale deed dated 30.01.2002; that the defendant therein/appellant herein made an attempt to interfere with the peaceful possession and enjoyment and hence, the suit for permanent injunction has been filed.

7.The suit was resisted by the appellant herein/first defendant, stating that he had already entered into an agreement of sale on 4.1.1999 with the second defendant; that on 4.1.1999, he paid an advance of Rs.20,000/- out of Rs.25,000/-; that he was ready and willing to pay the balance of Rs.5000/- and that he was actually put in possession and not the plaintiff in the suit and hence, the suit was to be dismissed.

8.Necessary issues were framed in both the suits and they were taken up for joint trial. The trial court, while dismissing the suit in O.S.No.255 of 2001, granted decree in O.S.No.318 of 2002. Aggrieved the appellant took it on appeal in A.S.Nos.9 and 154 of 2005. They came up for joint enquiry by the first appellate court. On dismissal of both the appeals, these second appeals have been brought forth.

9.The Court heard the learned counsel for the appellant, who with vigour and vehemence, would contend that in the instant case, the agreement for sale, which was marked as Ex.A.2, was proved by the appellant herein by not only examining himself, but also by examining P.W.2, who is the attester to the document; that he has clearly spoken to the fact as to the execution of the document and payment of advance of Rs.20,000/- and under these circumstances, it was a fit case, where specific performance should have been granted, but both the courts below have not considered the same and have granted the relief of permanent injunction in favour of the second defendant, finding that the agreement was entered into between the owner of the property, who is the first defendant and the second defendant, the subsequent agreement holder, on

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12.9.2001; that the subsequent sale deed, dated 30.01.2002 was not valid in law; that the second defendant was not entitled to for the relief, since the agreement entered into between the first defendant and the plaintiff on 4.1.1999 was in force and under these circumstances, the suit in O.S.No.318 of 2002 should have been dismissed and that substantial questions of law have got to be framed and these appeals have got to be heard.

10.After careful consideration of the submissions made by the learned counsel for the appellant and looking into the materials available, the Court is of the considered opinion that no case is made out by the appellant for admitting these appeals. The suit in O.S.No.255 of 2001 is filed by the appellant, seeking for the relief of specific performance on the strength of Ex.A.2, agreement, dated 4.1.1999, alleging that the sale consideration was Rs.25,000/- and out of Rs.25,000/-, a sum of Rs.20,000/- was paid as advance and the appellant was ready and willing to pay the balance of Rs.5000/-. He has further submitted that he was put in possession of the property pursuant to the agreement. The defence taken by the respondents before the lower court was that there was no agreement between the parties as put forth by the appellant on 4.1.1999 nor there was any payment of advance; that it was a forged document and apart from that the possession was not handed over to the appellant herein. In respect of the suit property, the first defendant, the owner, has entered into an agreement on 12.9.2001 with the second defendant, in respect of which, sale deed was also executed on 30.1.2002 and thus, the second defendant has become the owner of the property.

11.Both the courts below have marshalled the evidence proper and rejected the case of the appellant and rightly too. The case of the plaintiff in O.S.No.255 of 2001, in short, is that the first defendant is the owner of the property, who has entered into an agreement for sale on 4.1.1999. The main contention of the defence was that it was a fabricated and forged one. The trial court in exercise of powers under Section 73 of the Indian Evidence Act, compared the signatures of the first defendant found in the documents available with the signature in the agreement and found to be one thoroughly vary. Apart from that, in the instant case, P.W.2, who was the attester to the document, was examined and the document was rightly rejected for the simple reason that he could not identify the plaintiff himself. All the averments found in the recitals in the agreement were contrary to the actual situation.

12.It was contended by the plaintiff in O.S.No.255 of 2001 that the possession was handed over, but the possession remains with the first defendant and it was subsequently handed over to the second defendant after execution of the agreement with him. Apart from that, the electric service connection was in favour of the first defendant and it continued to be so. Therefore, Ex.A.2 document was a created one for the purpose of grabbing the property of the first defendant. Both the courts below have recorded that Ex.A.2 document was a forged one. Apart from that, the person, who seeks for specific relief, must come before the court with clean hands. But, the case of the appellant that he was put in possession, was found to be false. Under these circumstances, the case of the appellant herein was rejected and rightly too. So long as Ex.A.2 relied on by the appellant was found to be a forged one, no question of granting any relief in his favour would arise. On the contrary, the first defendant, who is the owner of the property, came with a defence plea that

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he executed an agreement and also sale deed in favour of the other defendant and thus, the second defendant became the owner of the property and thus, he was rightly entitled to for the relief of permanent injunction, which was rightly granted by both the courts below. Hence, in view of the concurrent findings, this Court is unable to notice anything to interfere with the findings or the decision arrived at by the courts below. Apart from that, no question of law would arise for consideration. Hence, these second appeals fail and the same are dismissed. No costs. Consequently, connected MP are also dismissed.

vvk

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To

1.The Additional Subordinate Judge,
Salem.

2.The Principal District Munsif,
Salem.

+ One cc to Mr. D. Shivakumaran Advocate SR 5606

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